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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE BETH LABSON FREEMAN, JUDGE

CISCO SYSTEMS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	NO. C 14-05344 BLF
	)	
ARISTA NETWORKS, INC.,	)	
	)	
Defendant.	)	San Jose, California
_____	)	Thursday, May 14, 2015

**TRANSCRIPT OF OFFICIAL ELECTRONIC SOUND RECORDING**  
**OF PROCEEDINGS**

FTR 1:44 p.m. - 2:32 p.m. = 48 minutes

**APPEARANCES:**

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BY: **BRIAN L. FERRALL, ESQ.**  
**DAVID J. SILBERT, ESQ.**

ALSO PRESENT: Neal A. Rubin, VP - Litigation, Cisco Systems, Inc.; Leah Waterland, Director of Legal and IT Litigation, Cisco Systems, Inc.; Sean Christofferson, Corporate Counsel for Arista Networks, Inc.

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1 Thursday, May 14, 2015

2 1:44 p.m.

3 P R O C E E D I N G S

4 **THE CLERK:** Calling case 14-5344, Cisco Systems, Inc.  
5 versus Arista Networks, Inc.

6 Counsel, please state your appearances.

7 **MR. PAK:** Good afternoon, your Honor. Sean Pak of  
8 Quinn Emmanuel. With me is my partner Jay Neukom, and we  
9 represent Cisco.

10 **THE COURT:** All right, Mr. Pak.

11 **MR. PAK:** And with us also is Neal Rubin, who is the  
12 Vice President of Litigation for Cisco --

13 **THE COURT:** Oh, welcome.

14 **MR. PAK:** -- and Leah Waterland, who is the Director  
15 of IT.

16 **THE COURT:** Welcome.

17 **MR. FERRALL:** Good afternoon, your Honor. Brian  
18 Ferrall, Keker & Van Nest, on behalf of Arista. My partner  
19 David Silbert is with us, as well as Sean Christofferson,  
20 in-house counsel at Arista, and our colleagues (inaudible).

21 **THE COURT:** Thank you. All right, well, I think we  
22 have a little bit of work to do here.

23 **MR. PAK:** Yes, your Honor.

24 **THE COURT:** This is probably not one of those cases  
25 I'll send you off until trial. (Laughter). Although that

1 would be nice.

2 **MR. PAK:** We'll try to behave.

3 **THE COURT:** I think this is the first of many of these  
4 intimate gatherings, I think.

5 Well, my first observation about this case is that I'm  
6 not -- you're going to have to do a lot to persuade me to  
7 bifurcate and basically split this in two, to be two trials.  
8 I don't see the benefit to the court in doing that, and as was  
9 raised by the defense, some concern about putting the copyright  
10 case along with the patent case, and the consequences of that.

11 So let's talk about bifurcation, because I actually  
12 think then, Mr. Pak, that that drives the scheduling.

13 **MR. PAK:** Yes, your Honor. Happy to do that. Your  
14 Honor, we believe that this case is exceptional, in two ways.

15 First of all, when it comes to copyright infringement,  
16 as with a lot of technology-based cases, you have lots of  
17 expert discovery that goes into analyzing source code, or in  
18 the context of command interfaces like this, there may be  
19 disputes about whether there's an act of infringement.

20 For the most part, as you can see from our pleadings  
21 as well as the documents that we've laid out, we don't think  
22 there is actually going to be any question of fact as to the  
23 act of copying.

24 Arista has admitted, in both judicial pleadings as  
25 well as am statements by their executives publicly, the

1 commands that we have identified. There are 500 multi-level  
2 commands that make up the interface, are in use, they're in  
3 use -- they have been in use for a long time with respect to  
4 the products that we have accused. They are also in use with  
5 respect to new products that have been recently released.

6 Furthermore, your Honor, what also is exceptional is  
7 that there are public statements by the very senior executives  
8 at the company as to why such copying occurred.

9 The CEO of Arista, who was actually an executive at  
10 Cisco and founded this company after leaving Cisco, has  
11 publicly stated that they have developed this interface to be  
12 similar to Cisco because, in her words, "What we don't have to  
13 invent, we don't want to do," and specifically, the training is  
14 very easy for the Arista products, because a Cisco expert in  
15 this area will be able to use the Arista products right away,  
16 as we have similar command line interfaces in the (inaudible)  
17 you're looking for.

18 So really, if you think about a copyright case, on the  
19 core issues of what is being copied and which products that use  
20 that interface or copyrighted work we think will be -- has  
21 already been largely decided by the judicial admissions and  
22 those public statements. So --

23 **THE COURT:** I don't think Arista agrees with that  
24 statement, but we'll find out from Mr. Ferrall. (Laughter).

25 **MR. PAK:** Well, and your Honor, I'm sure they will

1 respond in kind. This is how we're looking at the case.

2 **THE COURT:** Sure.

3 **MR. PAK:** And we also would point your Honor to  
4 various statements of admission from their pleadings. So these  
5 are, in their Answer, specifically paragraph 53 of the Answer  
6 that they filed on February 13, 2015, where Arista admits that  
7 it uses the IOS command expressions included in Exhibit 1 to  
8 Cisco's Complaint.

9 Your Honor, that Exhibit 1 is where we compiled a  
10 table identifying the 500 or so multi-command interfaces that  
11 were copied, and there's a judicial admission in paragraph 53.

12 The statements that I just made on the record about  
13 what their CEO said was also admitted in paragraph 46, and so  
14 on, in their Answer. I don't think there will be a dispute  
15 about these things.

16 **THE COURT:** Well, that sounds like you're lighting it  
17 up for what, in your view, would be a very effective summary  
18 judgment motion.

19 **MR. PAK:** Potentially, your Honor, except we recognize  
20 there may be factual issues in the copyright case --

21 **THE COURT:** All right.

22 **MR. PAK:** -- that go beyond just the infringement  
23 issues.

24 **THE COURT:** Okay.

25 **MR. PAK:** Some that I believe that they have pled and

1 will try to present evidence on an affirmative defense of fair  
2 use.

3 **THE COURT:** Sure.

4 **MR. PAK:** In (indecipherable). We also know, your  
5 Honor, that there is a legal issue of copyrightability, of  
6 whether these interfaces are subject to copyright protection,  
7 but again, that's a legal issue. We think the factual defense  
8 of fair use can also be presented, in abbreviated form.

9 And this really goes back to now why we are asking for  
10 this bifurcation, with this context.

11 Your Honor, the best way we see it is, there are two  
12 fundamental reasons why we think bifurcation makes sense in  
13 this exceptional case:

14 One, we think that it will simplify the issues for the  
15 jury, in the following manner. We have copyright claims, we  
16 also have patent claims, and they're directed to certain  
17 features of this Arista infringing product. We acknowledge  
18 that there is subject matter overlap. We acknowledge that many  
19 of witnesses and discovery in this case would cut across both  
20 the copyright and patent claims. Hence we filed everything in  
21 a single complaint.

22 **THE COURT:** I guess here's one of my concerns, is that  
23 certainly, the fewer issues for a jury, the easier it is for  
24 them. That's given. But if I can have one two-week trial or  
25 two two-week trials emanating from the same filing, it's not a

1 hard choice.

2 **MR. PAK:** We acknowledge that --

3 **THE COURT:** I mean, I don't even know why you filed --  
4 why didn't you file these two patent infringement claims in the  
5 other patent case?

6 **MR. PAK:** Your Honor, those patent cases are now  
7 subject to an ITC proceeding --

8 **THE COURT:** Were all of those -- so I gathered from  
9 your papers that all of those patents were in the parallel  
10 proceedings, and these two are not.

11 **MR. PAK:** That's right, your Honor.

12 **THE COURT:** Okay.

13 **MR. PAK:** And the reason why these two are not in that  
14 case, as we have explained in some of the briefing at the ITC,  
15 your Honor, is these are closely related. We acknowledge that.  
16 These are patents that are directed to the CLI functionality  
17 and how the CLI functionality -- the copyright protects what  
18 you see on the screen --

19 **THE COURT:** Yes.

20 **MR. PAK:** -- what the users see. These patents go to  
21 the underlying technology, in terms of the code, as to how we  
22 enable that functionality to work.

23 So there is overlap here, we acknowledge that, and  
24 that's the reason why brought this as a separate case.

25 However, your Honor, if I may, on the curing issue, we

1 are willing to simplify the case presentation of the copyright  
2 case. We are willing to put limits with respect to fact  
3 discovery with respect to the copyright claims, and we think  
4 that by having resolution of this issue in January, we will  
5 have a multiple -- we'll have a set of multiple benefits.

6 One will be, we do think that it will simplify the  
7 issues for the jury.

8 There's some damages issues here, your Honor. If you  
9 think about the subset of damages that overlap with the subset  
10 of damages in the patent case, for example, lost profits,  
11 I recently tried a case down in San Diego where we had a  
12 copy -- a breach of contract claim, patent claim, lost profits  
13 was an issue, and it was an exceedingly difficult process for  
14 the lawyers, but most importantly, for the jury --

15 **THE COURT:** Sure.

16 **MR. PAK:** -- to work through a verdict form where they  
17 had to allocate not only separate damages amounts, but  
18 overlapping amounts, to ensure that there was no --

19 **THE COURT:** Well, and it comes up in many fields. It  
20 can be more complicated here, but in much of -- in commercial  
21 litigation --

22 **MR. PAK:** Absolutely.

23 **THE COURT:** -- it's very difficult.

24 **MR. PAK:** Absolutely. So this is one of the benefits  
25 that, your Honor, that we see in trying the copyright case



1 where we have these admissions, from our perspective, that  
2 allow us to put on a case, we think, in the January time frame,  
3 that we could --

4 **THE COURT:** I haven't -- let me just be clear. I have  
5 no trial availability until next August.

6 **MR. PAK:** Ah, okay.

7 **THE COURT:** It's just --

8 **MR. PAK:** I see.

9 **THE COURT:** See, I mean, I don't usually -- I don't  
10 get cases that, at a first CMC, that are looking for trials  
11 where it's so soon, but I schedule three a week, and I can't  
12 schedule you as the fourth. First, it's too expensive for your  
13 client to be the last one trailing, but -- and that's just a  
14 reality.

15 **MR. PAK:** We appreciate that. We appreciate that.

16 **THE COURT:** So that may change things, I'm not sure.

17 **MR. PAK:** Well, certainly if your Honor doesn't have  
18 any availability until August, then we would be interested in  
19 expediting the overall case --

20 **THE COURT:** Right.

21 **MR. PAK:** -- and delay that --

22 **THE COURT:** I mean, I was looking at your dates, and  
23 frankly, I do appreciate -- while I understand Arista's not in  
24 agreement -- there you are, looking -- is not in agreement with  
25 such an expedited schedule for the case, and I have to take

1 that into account as well, but some of the arguments that  
2 Mr. Ferrall might have are moot because I'm not available, and  
3 so he can certainly rest assured, and when I look at my  
4 schedule, I'd be looking at late July and August for trial --

5 **MR. PAK:** Yes, of 2016.

6 **THE COURT:** -- of 2016. I am not even available for  
7 claims construction until February of 2016. So that will --  
8 I mean, ultimately, I think you two will have a great deal of  
9 agreement on dates, because I've really resolved the problem  
10 that the defendants had in their concerns about being ready for  
11 trial. I'm sorry. You know, there's nothing I can do.

12 **MR. PAK:** No, we understand. We understand, your  
13 Honor, and we understand.

14 **THE COURT:** Okay. Well, you make a good point on the  
15 issues. They actually -- I mean, I certainly recognize they  
16 are distinct issues, and it does divide.

17 Let me tell you some things, though. This is one  
18 case, and I can't treat it as two cases and double everything  
19 that gets done, and so if I bifurcate for trial and then you  
20 want to bifurcate some work for discovery, I would imagine, to  
21 the extent you wanted separate motions for summary judgment on  
22 the two halves of the case, I would limit your pages to 15 for  
23 each. I mean, we're not going to blow this up.

24 So, you know, those are just the realities of what  
25 you're suggesting, and I recognize that what -- I think what

1 you're suggesting makes some good sense, and frankly, it will  
2 be easier for me, as well, to deal with these distinct issues,  
3 let alone the jury, and I know it's easier for the jury.

4 **MR. PAK:** Yes, your Honor. Let us think about this,  
5 your Honor. We didn't consider the possibility --

6 **THE COURT:** Right.

7 **MR. PAK:** -- of doing something in --

8 **THE COURT:** I know.

9 **MR. PAK:** -- late July, on a consolidated basis, our a  
10 copyright case, but your Honor, we do -- at the end of the day,  
11 we have no interest whatsoever in creating any unnecessary work  
12 or doing duplication of discovery --

13 **THE COURT:** Sure.

14 **MR. PAK:** -- or any kind of motion practice --

15 **THE COURT:** What I'm thinking here, Mr. Pak, is that  
16 if you -- you would have two juries in this case then, wouldn't  
17 you?

18 **MR. PAK:** If we did the bifurcation, but with the July  
19 schedule, your Honor, it may make sense. We'll confer with  
20 Mr. Ferrall on that theme, but that might give us enough room,  
21 frankly, to be able to -- if we work hard enough, and I think  
22 that there are issues of common ground, and I have no interest  
23 in taking unnecessary discovery. There's actually quite a bit  
24 of discovery that the parties are already engaged in, which is  
25 another issue that we'll have to --

1           **THE COURT:** All right, then, we'll have to deal with  
2 that --

3           **MR. PAK:** -- deal with on cross-use, but there's a  
4 significant amount of discovery that that's happening right  
5 now -- millions of pages have been produced, dozens of  
6 witnesses are being deposed -- that would allow us, we think,  
7 to move this case along quickly, and I think that if your  
8 Honor's earliest availability is late July, early August,  
9 I think we could work hard to try to put everything together --

10          **THE COURT:** And have a single trial --

11          **MR. PAK:** A single trial --

12          **THE COURT:** And, you know, as I said, I'm not opposed  
13 to bifurcating it for trial because, I mean, there are  
14 scenarios where we would empanel a jury for the entire trial,  
15 but have two separate parts. I don't know if it will make  
16 sense, ultimately. I don't think it will --

17          **MR. PAK:** I don't think so, either, your Honor.

18          **THE COURT:** -- so, but I can't give you that quick  
19 trial on the copyright --

20          **MR. PAK:** Your Honor, let us, in light of, we didn't  
21 understand your Honor's availability --

22          **THE COURT:** Yeah.

23          **MR. PAK:** -- when we were setting it up. Let us  
24 revise our request.

25          **THE COURT:** All right.

1           **MR. PAK:** Our request would be, for some of the same  
2 reasons that we set forth today, and also in our papers --

3           **THE COURT:** Yeah.

4           **MR. PAK:** -- we do think that we don't need to wait  
5 until 2017 to try this case.

6           **THE COURT:** Okay.

7           **MR. PAK:** We would prefer to try the case in late  
8 July, early August, with your Honor's availability --

9           **THE COURT:** Yeah.

10          **MR. PAK:** -- and we would work hard to consolidate  
11 these issues and avoid unnecessary discovery, and get the case  
12 ready to try both the copyright and the patent claims.

13          **THE COURT:** All right. All right. Okay, well, that  
14 kind of cuts to and solves -- I wouldn't say solves, but brings  
15 clarity to that part of it, and I -- you know, as I said, it  
16 would be nice if I had more trial availability, but I just  
17 don't.

18                 So let me hear from Mr. Ferrall on this part of it.  
19 We do need to talk about the discovery issue. I was a little  
20 bit concerned about that.

21                 So Mr. Ferrall, this may have been good news for you.

22          **MR. FERRALL:** Yes, thank you. Thank you for  
23 clarifying a number of those things. But I do think, on  
24 bifurcation, just a couple -- I've never had a case where,  
25 before the case even gets under way, the plaintiff seeks to

1 bifurcate its own complaint.

2 **THE COURT:** Yeah.

3 **MR. FERRALL:** I mean, obviously, it could have brought  
4 these patent claims separately if it said that they need two  
5 different trials, and it could have related the two cases to  
6 you. It could have done a lot of things at the outset, and as  
7 I said, our suspicion is it's because they think that the  
8 Federal Circuit is more favorable to it for the copyright law  
9 than the Ninth Circuit, and by adding these claims together,  
10 that's what they assured themselves, that the case will go to  
11 the Federal Circuit if it's appealed.

12 But regardless, be that as it may, I think it's far  
13 too early to make a decision about bifurcation.

14 **THE COURT:** Yeah.

15 **MR. FERRALL:** Let's see what's left of this case in  
16 eight, nine months or something like that, and we can present  
17 it then.

18 And I also would suggest that if we're going to make  
19 decisions about bifurcation, especially if parties don't agree,  
20 that it be brought by motion under 42(b), as it should be, and  
21 they have to make a showing about prejudice and economy and so  
22 forth.

23 So as for the schedule, let's back up a little bit and  
24 let me give you the Arista perspective --

25 **THE COURT:** Okay.

1           **MR. FERRALL:** -- of this case for a moment, which is,  
2           in large part, actually in agreement with a number of things  
3           that Mr. Pak said, which is that Arista has been around for a  
4           while, 10 years.

5           **THE COURT:** Yes.

6           **MR. FERRALL:** The commands, the so-called Command Line  
7           Interface, which is actually just sort of the format for  
8           entering commands into these switches, and then the commands  
9           themselves are what's used in this format, of CLI, or Command  
10          Line Interface, those have been in use for many years, so --  
11          and public use.

12                 This is not a surprise that just, you know, appeared  
13          last fall. It's been around for a long time, and in fact,  
14          Cisco has been referring to these commands as standards, as  
15          conventional and so forth, for a long time and never said  
16          anything about anyone else, not just Arista but a lot of other  
17          companies, using these commands.

18                 So the idea that there would be a rush to judgment on  
19          the copyright claim defies five, six --

20           **THE COURT:** Sure.

21           **MR. FERRALL:** -- seven years of actual practice in the  
22          marketplace. So that's the history.

23                 But the case itself, obviously, has been filed for a  
24          little bit, and we -- by the way, we have a motion to dismiss  
25          on file before trial --

1           **THE COURT:** I know, that's coming up, yeah.

2           **MR. FERRALL:** -- but that's just as to a part of their  
3 own complaint.

4           **THE COURT:** Right.

5           **MR. FERRALL:** The case is ultimately about what is  
6 their copyrighted work, and here is where, as some of my  
7 colleagues would say, the rabbit goes into the hat.

8           They've attached 30 copyright registrations, and  
9 that's their asserted copyrighted work, and that's ultimately  
10 what this case is going to come down to. Those 30 copyright  
11 registrations -- maybe there are a few exceptions, but they  
12 mostly refer to the software, the source code, for their  
13 operating system.

14           Now, this is -- I don't know, because I've never seen  
15 it, and I don't know that anyone has seen it other than this --  
16 but it's likely millions or tens of millions of lines long  
17 each. Each. And there's 30 of them.

18           **THE COURT:** Yeah.

19           **MR. FERRALL:** And we need to understand -- and by the  
20 way, not one of them has been produced in the case yet. So the  
21 thing that they're suing on has not been produced, and so  
22 obviously, there's a lot of work to be done.

23           Is the fact that Arista has software that responds to  
24 these commands, is that known? Yeah, that's been known for a  
25 long time, and that's not going to be a dispute. It wasn't a



1 dispute even before the lawsuit was filed.

2 What's going to be a dispute is, is there  
3 infringement. And that has a lot of different legal and  
4 factual issues to it, including, is the work that you're  
5 asserting original, or does it, for example, come from some  
6 industry standard, which coined many of the terms that they say  
7 now no one else can use.

8 I mean, to look at the terms, to give you an idea  
9 about -- not that you would look through all 500 terms, but  
10 they're saying, among others, that they're able to prevent  
11 everyone else from using "IP Address" as a command. You know,  
12 another one, "Clock Set," that's supposedly something that they  
13 can prevent everyone else in the industry from using.

14 Obviously, we're going to have a lot of disputes about  
15 these commands that they say are their copyrighted work, and  
16 we're going to dispute.

17 So what we've proposed -- and then there's the patent,  
18 right.

19 **THE COURT:** Sure.

20 **MR. FERRALL:** So that's the patent, and I -- you know,  
21 we're not that far off on the patent schedule, but what we  
22 think is important, and I think is pretty conventional, is that  
23 there's sufficient time for discovery after claim construction  
24 in case things have changed sufficiently that we need to.

25 **THE COURT:** Okay.

1           **MR. FERRALL:** So basically, they've proposed two  
2 months after the hearing, without regard to when the order  
3 issues, and we're proposing five months after the hearing,  
4 assuming the order comes out, you know --

5           **THE COURT:** Well, I'm more in line with what you're  
6 suggesting, just so that I can get that claims construction  
7 order in your hands.

8           **MR. FERRALL:** Right.

9           **THE COURT:** And then -- and I don't combine that with  
10 summary judgment, so you'd still want to have --

11           **MR. FERRALL:** Right.

12           **THE COURT:** -- the opportunity.

13           **MR. FERRALL:** Right. So we've proposed a trial in  
14 January 2017. Part of that is, we don't want a trial at the  
15 end of December 2016.

16           **THE COURT:** No.

17           **MR. FERRALL:** But in any event -- or notwithstanding  
18 your last order, January 4th, 2017.

19           **THE COURT:** Right. No, that was 2016.

20           **MR. FERRALL:** Right, right.

21           **THE COURT:** Because they're just two dates, yeah.

22           **MR. FERRALL:** Or any January 4th --

23           **THE COURT:** Well, January's tough. I get it, right,  
24 we all have to have a little breathing room.

25           **MR. FERRALL:** So anyway, that's --

1           **THE COURT:** Well, that's interesting. What I -- in  
2 cases like this, I try not to nail down too many dates, but  
3 frankly, I think I'd rather give you some dates, with the  
4 understanding that we'll all work together to massage those  
5 dates as time goes on, but you can see my schedule's so  
6 impacted that I don't want to wait until claims construction to  
7 give you a trial date, because then you could be a year out,  
8 and that would be unfortunate.

9           So what I'd like to do is to let you know the -- and  
10 I can do that right now -- the earliest time that I can do  
11 claims construction, and from that, you can then tell me when  
12 each of you would, in a ballpark sense, suggest trial.

13           **MR. FERRALL:** Okay.

14           **THE COURT:** What I then would have you do is go back  
15 and -- to your offices and meet and confer, and just submit to  
16 me a new schedule for discovery, based on those two dates.

17           And when you gave me your dates, you were using the  
18 Patent Local Rules for the claims construction. I'm not going  
19 to -- we're not going to take our time here to go through those  
20 dates. You'll send me a stip and order.

21           And frankly, on the other dates, what I would  
22 typically give you is a trial date, a pretrial date, and a  
23 summary judgment date, and then I don't have to deal with  
24 anything else from that.

25           **MR. FERRALL:** Sure.

1           **THE COURT:** But I do need summary judgment filed  
2     90 days before trial, and so when we start counting the time,  
3     you may actually want a greater interval between claims  
4     construction and trial than you thought when you came in.

5           And, you know, it's not E.D. Tex here, it's not  
6     Delaware. You know, we actually do summary judgment motions in  
7     this district, that you had said you have -- (Laughter).

8           You know, I mean, you know all know more than I do.  
9     I just know what I hear. You've actually lived through it,  
10    right? Yeah, I'm sure you have the battle scars to prove it.

11          And although I like the idea of limiting you three  
12    one-page *in limine* motions, I don't think I'll be doing that,  
13    either. There's a lot to be learned from what they do, but  
14    I don't want their volume in order to have to put that in, but  
15    you have many cases in those jurisdictions, and so you know  
16    this district is different, and that's why we actually take the  
17    time, so that we can consider those motions.

18          I would be available -- the earliest I'd be available  
19    for your claims construction, and I do like the separate the  
20    tutorial from the -- you said argument, probably not  
21    witnesses -- by a week, I just find that I can better  
22    understand the product or the software, and then hear your  
23    arguments on the terms.

24          So the earliest I could do it would be to have your  
25    claims construction potentially on the -- the tutorial on

1 January 29, and the *Markman* hearing itself on February 5, and  
2 I'm glad to sort of lock those dates in right now if you want,  
3 and that's 2016. You have to look at schedules. If you want  
4 to take that home -- and obviously, you have experts you have  
5 to talk to and --

6 **MR. PAK:** Your Honor, it was, for Cisco.

7 **THE COURT:** Oh, that's great.

8 **MR. FERRALL:** That should -- I think that works for --

9 **THE COURT:** Okay.

10 **MR. FERRALL:** I've got to deal -- Mr. Van Nest is out  
11 of the country, and we ought to just confirm with his schedule,  
12 but I don't see --

13 **THE COURT:** Well, here's, you know --

14 **MR. FERRALL:** I've got his trial schedules.

15 **THE COURT:** Good.

16 **MR. FERRALL:** I think it's okay, but if we could just  
17 confirm --

18 **THE COURT:** You know, if it's not going to work, just  
19 meet and confer, and suggest some other weeks. I do them on  
20 Fridays, and so -- and what I'd presume is that I give you a  
21 maximum hour each for the tutorial. Often it takes less.

22 And then for the *Markman* hearing itself, this is two  
23 patents, I have -- we don't know how many terms there will be  
24 in dispute, but typically, two hours is sufficient, and if it  
25 bleeds into a third hour to finish by noon, that's fine with

1 me. So I can't imagine it taking more than that, based on my  
2 experience, and I think you know how to do that, as well.

3 Looking at trial, and here's where I don't know that  
4 you're ready yet, I would not be -- I'm not available to  
5 schedule a two-week trial until -- well, realistically, I think  
6 August 1st is really my best earliest date, and I'm actually  
7 quite available after that.

8 So I'm not locking you into that. I don't know  
9 whether you want to think about that and get back with a  
10 stipulation on a trial date or have me just give you that date  
11 now and --

12 **MR. PAK:** From Cisco's perspective, we would take the  
13 August 1st date.

14 **THE COURT:** Okay. Mr. Ferrall?

15 **MR. FERRALL:** Your Honor, I think -- well, I'd like to  
16 look at the schedule. I just think that, in light of the  
17 *Markman*, I think that might be tight, August 1 trial --

18 **THE COURT:** So you would have your summary judgment  
19 motions on May 1st, and so you would have three months -- we  
20 sort of split it in half -- it's six months from *Markman* to  
21 trial. It's a pretty reasonable amount of time. I'm flexible  
22 on that.

23 Why don't we -- I'm going to tentatively suggest trial  
24 on August 1. What I'd like you to do is to confirm this within  
25 a week. If, for some reason, that date is not going to work,

1 and hopefully you'll agree, if you want to move it a week or  
2 two into the future beyond that and you can agree, then you can  
3 just send me a stipulation, and those dates are available.

4 Let me give you pretrial and summary judgment dates  
5 based on August 1, and based on that, you can move all of those  
6 dates by the same intervals, and you'll understand that.

7 I would have your pretrial on July 7, and your summary  
8 judgment motions I'm going to go ahead and schedule for May 5.  
9 I've already -- I will reserve that date, so you don't need to  
10 worry about that. And then you can -- yes, you can go from  
11 there.

12 There's a slight chance, with that schedule, that you  
13 will be preparing your summary judgment motion before you have  
14 my *Markman* order. You know, I just want to be realistic. So  
15 keep that in mind as you look at the dates.

16 **MR. FERRALL:** Yes.

17 **THE COURT:** And it all depends on what my trial  
18 schedule actually matures into at that point.

19 **MR. FERRALL:** Your Honor, but that's what I'm  
20 concerned about. We're -- an expert -- not just summary  
21 judgment, but all expert reports, which would be presumably for  
22 summary judgment, may not have the benefit of your *Markman*  
23 order, and I realized that, you know, things can be shifted  
24 around a little bit, but at this rate, expert reports and  
25 discovery would typically be, even by Cisco's schedule, you

1 know, at least a month and a half or close to two months.  
2 There's just no time in there before you have to file your  
3 summary judgment papers at the beginning of April.

4 **THE COURT:** Well, I think it's realistic that you  
5 won't have my *Markman* order until middle of March, and you'd be  
6 filing your -- so it's a -- I know in a case like this, these  
7 are -- these dates make a difference to you, and so I don't --  
8 I'm not trying to jam it.

9 **MR. PAK:** Your Honor, if I may --

10 **THE COURT:** Mr. Pak.

11 **MR. PAK:** -- just on that one point?

12 **THE COURT:** Sure.

13 **MR. PAK:** We do this all the time in patent cases --

14 **THE COURT:** Yes, of course you do.

15 **MR. PAK:** -- in the ITC, Eastern District of Texas.  
16 We've had *Markman* -- some courts don't even issue *Markman*  
17 orders until the day before trial. We have --

18 **THE COURT:** Yeah.

19 **MR. PAK:** -- experts, they have very sophisticated  
20 experts that they have disclosed. We do this all the time. We  
21 do an expert report to show -- you present your opinions on the  
22 one side of constructions, you have another. We do this all  
23 the time.

24 **THE COURT:** Yeah.

25 **MR. PAK:** I think the summary judgment motions will be



1 framed in exactly the same manner.

2 **THE COURT:** Many judges combine *Markman* --

3 **MR. PAK:** Absolutely, your Honor.

4 **THE COURT:** -- with summary judgment, and so that's  
5 what you have to do. I mean, judges on this court, but judges  
6 throughout the country.

7 **MR. PAK:** Absolutely, your Honor. I --

8 **THE COURT:** Why --

9 **MR. PAK:** For all the reasons we talked about --

10 **THE COURT:** Okay.

11 **MR. PAK:** -- we think that August would make sense --

12 **THE COURT:** Okay.

13 **MR. PAK:** -- to do this.

14 **THE COURT:** Well, let's do that. Frankly,  
15 September -- August -- yeah, that works for me.

16 You are going to, if there is some difficulty with a  
17 witness on any of these dates, you'll meet and confer.

18 **MR. PAK:** Yes.

19 **THE COURT:** What I would -- and then I'm going to --  
20 I'd like -- and I think within two weeks is fine, if you'd send  
21 me a stip and order filling in all of the Patent Local  
22 Rule-related dates leading up to -- well, I think you can do  
23 many of them now --

24 **MR. PAK:** Yes.

25 **THE COURT:** -- and just fill in as much of that as

1 possible, and I'm expecting that that will just be an  
2 agreement, that there won't be any difficulty in working out  
3 these dates. Some of them are just applying the rule, and so  
4 it's getting out a calendar.

5 All right. Let's move on, then. Another issue that  
6 had come up was the issue of discovery, and that was whether  
7 all of the discovery in all four cases would be deemed  
8 discovery in this case, and Mr. Ferrall, I think your  
9 opposition to that was based on having a mountain of discovery  
10 without being able to locate the responsive documents to this  
11 case.

12 **MR. FERRALL:** Well, right, and Mr. Silbert's going to  
13 address --

14 **THE COURT:** Okay, good.

15 **MR. SILBERT:** Well, yes, your Honor, that's part of  
16 the issue. It's -- there absolutely are a mountain of  
17 documents in the ITC litigation --

18 **THE COURT:** Yeah.

19 **MR. SILBERT:** -- that's an understatement, and I think  
20 it's 4 to 5 million pages of documents that have been produced,  
21 total, in that case.

22 As Mr. Pak just explained to you a few minutes ago,  
23 the cases largely do not overlap. In other words, this case,  
24 both the copyright claims and the two patents at issue are  
25 directed to Command Line Interfaces. The 12 patents in the two

1 ITC cases are not directed to Command Line Interfaces or  
2 anything particularly close to them. There are 12 different  
3 patents, they're directed to various things, but none of them  
4 focus on CLIs, and that's why counsel for Cisco explained to  
5 you that they put these two patents in this case --

6 **THE COURT:** Yeah, right.

7 **MR. FERRALL:** -- not to try to settle Circuit  
8 jurisdiction, but because these two patents related to  
9 something different than those patents.

10 So there's a vast amount of evidence; the vast  
11 majority of it is probably completely irrelevant to this case,  
12 and so one point is, it's just not going to help very much in  
13 terms of easing the discovery burden to try to say -- to  
14 suddenly cross-apply all of that, all those issues -- all those  
15 documents.

16 Now, if that were the only issue, then maybe we'd say,  
17 okay, maybe it's not going to help very much, but let's go  
18 ahead and do it, because obviously, to the extent there's a way  
19 for Arista to reduce the discovery burden and expense, which is  
20 quite significant in a case like this, you know, it would look  
21 for opportunities to do that.

22 **THE COURT:** Now, is your firm representing Arista in  
23 the other cases?

24 **MR. FERRALL:** We have appeared in those cases, in the  
25 ITC cases, but we are not --

1           **THE COURT:** You're not --

2           **MR. FERRALL:** -- principally representing them. It's  
3 Fish & Richardson.

4           **THE COURT:** Okay.

5           **MR. FERRALL:** The problem is, there are very  
6 significant risks to Arista of taking those documents in the  
7 ITC case and making them part of the record in this case, and  
8 they basically come down to the issue of confidentiality.  
9 There is extremely sensitive -- extremely sensitive -- business  
10 information of Arista that's all over those millions of  
11 documents that are in the ITC proceeding, and that's not all.

12           **THE COURT:** And those are better protected in the ITC  
13 proceeding than they are here?

14           **MR. FERRALL:** Absolutely, and the ITC -- and your  
15 Honor's mentioned you've never had the pleasure of being in the  
16 Eastern District of Texas, you'd really trust me you've never  
17 had the pleasure, of being at the ITC.

18           **THE COURT:** (Laughs.)

19           **MR. FERRALL:** The ITC works in a particular way, and  
20 with respect to discovery and ordering discovery, and I think  
21 it's fair to say they're effectively a steamroller. I mean,  
22 you have to produce every last thing. You have to turn the  
23 company upside down.

24           The flip side of that is that they're extremely  
25 protective of confidentiality, and so nobody can see anything,

1 the courtroom is sealed --

2 **THE COURT:** Um-hum.

3 **MR. FERRALL:** -- for trial, et cetera, and so there's  
4 a lot of Arista information. There's also a great deal of  
5 third-party sensitive confidential information, that there's --  
6 of record in the ITC case.

7 And so in federal court, of course, there are  
8 protective orders, there are confidentiality protections.  
9 They're not nearly as strong --

10 **THE COURT:** Sure.

11 **MR. FERRALL:** -- as they are in --

12 **THE COURT:** Well, I mean, we certainly, in the  
13 discovery process, we can develop a protective order, but the  
14 courtroom is open --

15 **MR. FERRALL:** Right.

16 **THE COURT:** -- and the trial is public --

17 **MR. FERRALL:** Correct.

18 **THE COURT:** -- and it's highly unusual to close the  
19 courtroom, even for limited periods of time, once we're in  
20 trial.

21 **MR. FERRALL:** Yes, we are absolutely --

22 **THE COURT:** So you all know that, and that's my  
23 practice, as well.

24 **MR. FERRALL:** Yes, we expect that, and that's for all  
25 good reasons, because the courts are supposed to be open to the

1 public --

2 **THE COURT:** Yes.

3 **MR. FERRALL:** -- to the extent that they can be, but  
4 it creates a very different world --

5 **THE COURT:** Sure.

6 **MR. FERRALL:** -- and a different set of risks for  
7 having a bunch of highly confidential information be put into  
8 the record in this case.

9 Now, a lot of Arista's confidential information is  
10 going to be put into the record in this case --

11 **THE COURT:** Sure.

12 **MR. FERRALL:** -- because it has to be. That's just  
13 life, and we understand that, but what we don't want to do, and  
14 very strenuously oppose, is to have a situation where there are  
15 literally millions of pages of extremely sensitive information  
16 of both Arista and of our customers, of third parties, whose  
17 interests are implicated, that get put into this case for no  
18 reason.

19 **THE COURT:** Yeah, I think that's my -- that's where  
20 I would fall on this.

21 I also feel that the confusion -- well, confusion is  
22 the wrong word, but I'm really concerned with the lack of  
23 clarity of the response to discovery in this case, based upon  
24 the merging of all the discovery from all of the cases, is a  
25 concern to me, and, you know, especially down the road, if

1 I were to ever be confronted with an *in limine* motion based  
2 upon the failure of discovery, it would essentially be -- there  
3 would be no way to make such a motion and to protect.

4 I also think the cost involved in unsorted production  
5 of documents that much of which is clearly irrelevant to the  
6 case, again, is a way of causing an inefficiency in this case.  
7 So I'm not inclined to allow all that discovery.

8 Now, that's not to say that you can't designate  
9 certain documents or -- that have already been produced by --  
10 that you have access to, by some -- I mean, if they've been  
11 identified page by page, that they can't be designated.  
12 Frankly, it's usually easier just to re-produce them than go  
13 through that.

14 So I know that doesn't actually happen, but I'm not  
15 inclined to order that at this point. I don't see any good  
16 cause, given the different -- the whole point of this case  
17 being distinct from the other cases.

18 **MR. FERRALL:** Thank you, your Honor.

19 **THE COURT:** All right. Are there other issues,  
20 Mr. Pak?

21 **MR. PAK:** Your Honor, if I may just -- if I could have  
22 a moment --

23 **THE COURT:** Sure.

24 **MR. PAK:** -- to address that last issue?

25 **THE COURT:** Yeah.

1           **MR. PAK:** And I'll be very brief, but your Honor, in  
2           this Ninth Circuit, we actually have a strong preference that  
3           litigation records in collateral litigation, especially between  
4           parties, are made freely available, and this is one of many  
5           cases, but the *State Farm* case, 331 F.3d 1122, Ninth Circuit,

6           "This court strongly favors access to discovery  
7           materials to meet the needs of the parties engaged in  
8           collateral litigation. Allowing the fruits of one  
9           litigation to facilitate preparation in other cases  
10          advances the interests of judicial economy by avoiding  
11          the wasteful duplication of discovery.

12          "Where reasonable restrictions on collateral  
13          disclosure will continue to protect an affected  
14          party's legitimate interests in privacy, a collateral  
15          litigant's request to the issuing court to modify an  
16          otherwise proper protective order so that collateral  
17          litigants are not precluded from obtaining relevant  
18          materials should be generally granted."

19          Every -- virtually every case, your Honor, that has  
20          ever dealt with this issue in this district have allowed for  
21          cross-use, including the *Oracle v. SAP* case and countless  
22          others, and here's the simple reason why. Your Honor, we live  
23          in an electronic world. We don't use paper.

24          **THE COURT:** No.

25          **MR. PAK:** The documents that they're talking about are



1 documents that are sitting in a server that have now already  
2 been constructed, they have reviewed all of these documents for  
3 production in the ITC case for privilege, for relevance,  
4 coding. All of that is sitting in a server that Keker's  
5 attorneys have access to, that the other attorneys of record in  
6 the ITC case all have access to.

7 What we're talking about, your Honor, is not a  
8 question of admissibility. We have tried the most confidential  
9 of cases in this district, on -- whether it's trade secret  
10 cases --

11 **THE COURT:** Absolutely, yeah.

12 **MR. PAK:** -- patent cases, and all we're asking for  
13 your Honor is not to take millions of records and dump it into  
14 the public record.

15 What we're saying is, for discovery purposes, there is  
16 absolutely no reason why two litigants who are already engaged  
17 in cross-use -- and by the way, your Honor, there are two ITC  
18 investigations that are pending, with different set of patents.  
19 Both Arista and Cisco have entered into a stipulation of  
20 cross-use on those two cases.

21 And not only that, your Honor. Those two cases have  
22 corresponding District Court actions here, which have been  
23 stayed.

24 **THE COURT:** Yes, I know that.

25 **MR. PAK:** All right, that's going to be part of this

1 record in Northern California regardless, because once -- at  
2 the ITC, you cannot award damages. All you can do is issue an  
3 exclusionary order. That record is going to be a record here  
4 in Northern California, for subsequent proceedings in damages  
5 in this case, if there's a liability finding.

6 So this whole notion that somehow there is any harm to  
7 Arista from precluding cross-use of documents and witness  
8 testimony that is already being gathered and produced makes no  
9 sense. Those records will be part of the Northern California  
10 district record. We have protective orders that have been  
11 blessed by all the various judges in the Federal Circuit that  
12 protect us. We're going to be disclosing source code. Cisco  
13 will be disclosing its crown jewels --

14 **THE COURT:** Well, that's going to happen no matter  
15 what.

16 **MR. PAK:** No matter what, your Honor. But here's the  
17 most important thing about relevance, your Honor: The number  
18 one witness that we believe on the technical issues in this  
19 case is a gentleman named Ken Duda, who is the CTO of Arista.  
20 You've seen some of his statements. He is identified in the  
21 initial disclosures as the person with the most knowledge about  
22 the Command Line Interface for Arista.

23 He's being deposed next week --

24 **THE COURT:** Oh.

25 **MR. PAK:** -- in the ITC cases. Thousands of his

1 e-mails have been produced. All of the testimony that he will  
2 give is highly relevant to not only technical development of  
3 the accused products, but to how they overlap with respect to  
4 Cisco's products, damages, lost profits, domestic industry.  
5 These are all issues that are going to be litigated in full,  
6 and those cases, your Honor, are going to trial in September  
7 and November of this year.

8 **THE COURT:** In the ITC.

9 **MR. PAK:** In the ITC. They move very fast.

10 So what we're talking about, your Honor, is the  
11 incredible amount of efficiency that we will gain by having not  
12 only the litigation discovery records, but the ITC proceedings,  
13 the very proceedings --

14 **THE COURT:** So that would then require Arista to take  
15 4 to 5 million documents to look for the, conservatively  
16 speaking, million that are relevant to this case.

17 **MR. PAK:** No, not at all, your Honor, because all they  
18 have to do --

19 **THE COURT:** And how is that?

20 **MR. PAK:** Because for us, all they have to do is --  
21 first of all, there is no production of documents.

22 **THE COURT:** No, so it's all word search.

23 **MR. PAK:** It's all word search, your Honor.

24 **THE COURT:** And they can do that themselves.

25 **MR. PAK:** Absolutely, or we could do it.

1           **THE COURT:** I see.

2           **MR. PAK:** I mean, all -- your Honor, in terms of the  
3 burden of any kind of searching, we're not asking for them to  
4 incur any kind of attorney cost, or any kind of document  
5 production cost.

6           All we're simply saying is that I'm not of record at  
7 the ITC. I don't represent Cisco there. I, as Cisco's  
8 attorney in this case, all I need is a password to access --

9           **THE COURT:** Um-hum, I see.

10          **MR. PAK:** -- that electronic database. My attorneys  
11 from Quinn Emmanuel will conduct fewer searches against that,  
12 to find what we think is relevant.

13          And when it comes down to protecting confidential  
14 information for trial purposes, out of the millions of  
15 documents, we're going to be talking about, at most, a couple  
16 of hundred exhibits. We will have admissibility hearings on  
17 those exhibits. We will talk about how the -- you know, to the  
18 extent that there is a truly exceptional case, for example,  
19 source code, we work this out all the time where parties will  
20 only present just the amount of information that they need to  
21 actually present their case. We will keep of rest of it  
22 sealed --

23          **THE COURT:** Sure.

24          **MR. PAK:** -- the source code. We can deal with all  
25 these issues.

1           So your Honor, I think, if you step back and think  
2           about cost, there's absolutely no impact on them. If you talk  
3           about administrative burden, absolutely no impact. If you  
4           think about the strong policy preference in this district and  
5           this circuit, Ninth Circuit, makes it very clear -- and this is  
6           case after case after case, and we're happy to submit more  
7           cases, your Honor -- that is a strong policy interest in  
8           avoiding wasteful duplication of effort, and this court has  
9           numerously and repeatedly ruled on this in our favor, your  
10          Honor --

11           **THE COURT:** Of course, it's your -- yes, well...

12           **MR. PAK:** And your Honor, here's the bottom line. For  
13           example, let's take Mr. Duda. He is going to be deposed. The  
14           testimony that he's going to give are potentially judicial  
15           admissions that are highly relevant to this case. If somehow,  
16           because of a procedural issue, protective order issue, we are  
17           not permitted to obtain that --

18           **THE COURT:** Well, any protective order issued in the  
19           other cases is going to have to be modified, which I -- I mean,  
20           because I don't know that it will include use in other  
21           litigation.

22           **MR. PAK:** Your Honor, the parties are actually in  
23           negotiation right now. The attorneys representing Arista and  
24           Cisco are -- in the ITC cases are already in negotiations about  
25           cross-use --

1           **THE COURT:** Okay.

2           **MR. PAK:** -- with respect to modifying the protective  
3 order in the ITC case.

4           **THE COURT:** All right.

5           **MR. PAK:** So that is not a problem for us, to modify  
6 the protective order there to allow for cross-use.

7           **THE COURT:** Well, it's not my concern. You'll have to  
8 deal with that.

9           **MR. PAK:** Yes, we will deal with that.

10          **THE COURT:** Yes.

11          **MR. PAK:** All we're saying, your Honor, is there's  
12 absolutely no burden to them whatsoever. We can deal with all  
13 of their concerns.

14          **THE COURT:** All right.

15          **MR. PAK:** The bottom line is, there's a tremendous  
16 amount of efficiency to gain, and I think that every case law  
17 that you're ever going to find on this issue will say there is  
18 absolutely no barrier to cross-use.

19          **THE COURT:** All right. Mr. Silbert, let me hear,  
20 just, a wrap-up on that.

21          **MR. SILBERT:** If I could just clarify, because we seem  
22 to have deviated a little bit --

23          **THE COURT:** Yeah.

24          **MR. SILBERT:** -- from what I thought we were talking  
25 about, and I just want to be clear, where, if Mr. Pak says, for

1 example, that Ken Duda's testimony in the ITC case is relevant,  
2 or as he puts it, contains critical admissions for this case,  
3 then that testimony would be produced in this case, because it  
4 is relevant.

5 **THE COURT:** Yes.

6 **MR. FERRALL:** Our proposal is that documents that are  
7 relevant to this case will be produced in this case. There's  
8 no dispute about that. And documents that would be called for  
9 in discovery will be produced in this case.

10 **THE COURT:** But if you are given access to the server  
11 created, and you can do the word search that you want, then  
12 you're not going to be -- you're going to be able to control  
13 the information you receive.

14 **MR. SILBERT:** I mean, no more than every litigant in  
15 every other case --

16 **THE COURT:** Sure.

17 **MR. SILBERT:** -- in a typical document a -- that's the  
18 way a typical document production works.

19 **THE COURT:** Yeah, of course.

20 **MR. SILBERT:** It's resolved with lots of different  
21 means, but it's resolved with agreeing on search terms to use  
22 and a custodian list and things like that, and there's no  
23 reason those processes --

24 **THE COURT:** I would expect them to be used.

25 **MR. SILBERT:** Exactly. So the issue isn't, are they

1 going to be deprived of relevant evidence. They're going to  
2 get all the relevant evidence. The issue is, do we take  
3 millions of documents that are not relevant, that would not  
4 otherwise be produced, that are highly sensitive, and then make  
5 them of record in this case, where they can be used with much  
6 more lack of precision, and --

7 **THE COURT:** Well, I don't think I'm actually buying  
8 the -- I think we can protect, because until you enter the  
9 courtroom, you have complete control over the lockbox that  
10 these documents are in, and you can write protective orders  
11 that will protect you, and they can be identical to what the  
12 ITC provides.

13 As you move into trial or motions, of course, we're  
14 guided by relevance, and so irrelevant documents are never  
15 coming into court. And so we can certainly develop a process  
16 where you have some control before the documents -- where you  
17 can file them under seal with a request before they're made  
18 public, and we can go through them. I think that we can  
19 protect the confidentiality.

20 I don't actually have that concern, because once we  
21 winnow it down to the documents you need for trial, it doesn't  
22 matter whether it started from an universe of 5 million  
23 documents or an universe of 500,000 documents, they're still  
24 going to be highly confidential, and the Court is going to need  
25 to determine at the time whether anything is going to be



1 sealed, and it -- I mean, sometimes the courtroom is open, the  
2 document is ultimately sealed, so that it's not -- it doesn't  
3 have the lingering availability, and it's just in the ether of  
4 the trial.

5 **MR. SILBERT:** Yeah, I mean, I will say that Mr. Pak is  
6 certainly right that we try in this --

7 **THE COURT:** Sure.

8 **MR. SILBERT:** -- district extremely -- cases involving  
9 extremely confidential information.

10 **THE COURT:** Yeah.

11 **MR. SILBERT:** There is collateral damage from that  
12 that's very real to a lot of companies that often comes in the  
13 aftermath of a trial --

14 **THE COURT:** Well, if, as you describe them, as truly  
15 irrelevant, then I can assure you they won't be part of this  
16 record.

17 **MR. SILBERT:** Well, fair enough. Again, I understand.  
18 I understand what --

19 **THE COURT:** All right, here's what I'm going to  
20 suggest. I think you need to get started on the  
21 cross-discovery. If a problem arises, if you feel that it is  
22 causing you to be unable to get access to the information that  
23 you're entitled to in a manner that you can use it, then you  
24 can come back, and I think maybe that's our best way to  
25 approach it.

1 All right, you're going to check dates. I really --  
2 I do appreciate the complexities in this case, but I think  
3 we've been able to work through a few things today, and I'm not  
4 inclined to set another case management conference. I think  
5 you'll bring issues to my attention as you need.

6 Is that agreed?

7 **MR. FERRALL:** Yes, your Honor.

8 **MR. SILBERT:** That's fine, your Honor.

9 **THE COURT:** Good, all right. Thank you all.

10 **MR. PAK:** Thank you, your Honor.

11 **THE CLERK:** Court is adjourned.

12 2:32 p.m.

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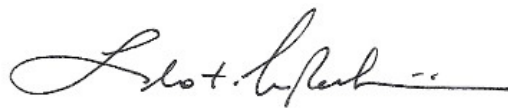
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**CERTIFICATE OF TRANSCRIBER**

I, Leo Mankiewicz, certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.



05/18/2015

Signature of Transcriber

Date